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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,722	01/18/2005	Sybille Buchwald-Werner	C 2703 PCT/US	2264
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COGNIS CORPORATION PATENT DEPARTMENT 300 BROOKSIDE AVENUE AMBLER, PA 19002			EXAMINER FARZANEH, SHAHRZAD	
			ART UNIT 4173	PAPER NUMBER
			MAIL DATE 12/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,722	Applicant(s) BUCHWALD-WERNER, SYBILLE	
	Examiner SHAHRZAD FARZANEH	Art Unit 4173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2 sheets</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 11-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 11-19 refer to an amount effective of the claimed cosmetic composition to inhibit or prevent the growth of bacteria, while there is no amount specified in the specification as to what is effective for the purposes of inhibiting or preventing bacteria growth.

3. Claims 11-20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for treatment, does not reasonably provide enablement for prevention of acne. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. Claims 11-20 pertain to acne treatment or prevention, the scope of enablement for these claims is that the prevention of acne is not enabled.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11, 18, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. The glycyrrhetic acid derivatives of claims 11 and 22 are not specifically defines, as well as the salicylic acid derivatives of claim 18 are not specifically defined.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 11-18 and 20-29 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No 6294186 B1 to Beerse et al.

8. The above reference teaches antimicrobial compositions which provide enhanced immediate as well as residual anti-viral and antimicrobial efficacy (see abstract). The composition can be used on keratinous tissue, i.e. skin, (see column 4, lines 14-15). The antimicrobial composition as taught by Beerse, et al. comprise a safe and effective amount of a benzoic acid analog, for example, salicylic acid as an anti acne agent(see column 6, lines 9-10) from about 0.01% to about 20%, by weight (see column 6, line 27-31); additionally an alcohol can be used as a carrier as taught by Beerse et al. (see column 6, line 44-46); A safe and effective amount of a metal salt, including alkali earth metal and alkaline earth metals (see column 6, lines 62-64); skin moisturizing agents, such as stearyl stearate (see column 10, line 59) are present in the invention as disclosed by Beerse, et al.; emulsifiers useful in the compositions as disclosed in Beerse include C₁-C₃₀ fatty alcohols (see column 16, lines 60-64); an antimicrobial or antifungal active may also be added to the compositions as taught by Beerse, et al. from about 0.001% to

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about 10% by weight (see column 20, lines 39-43); natural anti-inflammatory agents are useful in the composition taught by Beerse, et al., for example, *Glycyrrhiza galabra*, including glycyrrhetic acid and salts and esters thereof (see column 33, lines 44-58).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 19 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6294186 B1 to Beerse et al., and in view of US Patent No. 6468509 B2 to Lapidot, et al.

11. See above 102(b) rejection. The scope of the prior art is such that the antimicrobial compositions, as disclosed in Beerse, et al, can be used to enhance the efficacy of antibacterial characteristics in cosmetics prepared for the skin, comprising natural anti-inflammatory agents for example, *Glycyrrhiza galabra*, including glycyrrhetic acid and salts and esters thereof (see column 33, lines 44-58).

12. The disclosure of Beerse, et al.; however, does not teach the composition being microencapsulated. The teaching of Lapidot, et al. does teach the use of sol-gel micro encapsulation, in the context of a core material which is coated by a sol-gel coating matrix (see column 4, line 1-3). The encapsulation of the active ingredient forms a barrier between the product and the human tissue for which the product is applied, as well as between other

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ingredients present in the composition, and within a container in which the product is contained (see column 4, lines 9-17).

13. This teaching of Lapidot, et al. motivates or suggests combining of its teaching along with the disclosure of Beerse et al., to result in the claimed invention of dependent claims 19 and 30 of the instant application.

14. I would have been prima facie obvious to one skilled in the art, at the time of the invention, to use the combination of antimicrobial, antifungal, fatty alcohols, and natural anti-inflammatory agents *Glycyrrhiza galabra*, including glycyrrhetic acid and salts and esters thereof, as well as the micro encapsulation, as taught in Lapidot, et al, to create an increased efficacy anti acne product which has improved characteristics as stated above regarding the protective barrier that micro encapsulation renders. These characteristics are, for example, protection from adverse reaction caused following permeation of the anti acne product into the packaging material, and the incorporation of components in the anti acne that may be incompatible.

Conclusion

No claim is allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAHRZAD FARZANEH whose telephone number is (571)270-1557. The examiner can normally be reached on Weekly 7:30-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SF

/Ardin Marschel/
Supervisory Patent Examiner, Art Unit 1614